SUPERIOR COURT OF WASHINGTON
COUNTY OF WHITMAN

DAVID J. BROWN, Petitioner, and WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD EFFECTIVE IMMEDIATELY

TO: Respondent's Attorney: DANIELLE HESS

NOTICE IS HEREBY GIVEN that the undersigned attorney withdraws from any further representation in the above-entitled matter effective immediately.

Petitioner David Brown specifically acknowledges that there is a pending Motion to Dismiss filed by the Respondent, scheduled for hearing on July 30, 2010 at 8:30am in Whitman County Superior Court. Petitioner does not wish for the undersigned attorney to represent him at that hearing.

Petitioner's last known address is as follows: 18221 NE 21st Street, Redmond, WA 98052.

DATED: This 27 day of July 2010.

Petitioner

David Brown

ESSER & SANDBERG, PLLC
Attorneys for Petitioner

By
Roger Sandberg #39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2285

FROM : THE BROWNS FAX NO. : 425 746 0614 Jul. 27 2010 10:11PM P1

ATTORNEY'S CERTIFICATE OF SERVICE

I certify that on this 28 day of July, 2010 I caused a copy of the foregoing Notice of Intent to Withdraw as Attorney of Record to be mailed to Danielle Hess, Attorney General's Office, 332 French Administration Building, PO Box 641031, Pullman, WA 99164-1031.

Roger Sandberg

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

JUL 1 9 RECD

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Washington State University Division
332 French Administration Bldg. • P.O. Box 641031 • Pullman, WA 99164-1031
Telephone: (509) 335-2636 • Facsimile: (509) 335-1663

July 15, 2010

TRANSMITTED VIA
E-MAIL AND U.S. MAIL
(roger@essersandberg.com)

Roger Sandberg
Esser & Sandberg, PLLC
520 East Main Street
Pullman, WA 99163

RE: ***David Brown vs. Washington State University***
Whitman County Superior Court No. 10-2-00174-1

Dear Mr. Sandberg:

RCW 34.05.566(3) allows an agency to charge a non-indigent petitioner with the reasonable costs of preparing and transmitting the record on appeal, including the cost of the certified transcript. The estimated cost of the certified transcript in this case is $1,040.00, which is broken down as follows:

Convert to transcriptionist's media: $135 per hour x 3 hours	$ 405.00
Per page rate: $4.10 x 150 pages (based on 50 pages per hour)	$ 615.00
Mailing	$ 20.00
TOTAL	$1,040.00

In addition, WSU charges for the cost of copies of the agency record (63 copies @ $.10 per page = $6.30).

Please send me a check made payable to Washington State University in the amount of $1,046.30 at your earliest convenience. WSU will reimburse you if the actual amount of the certified transcript is less than the estimated amount and will bill you if it is more. Once we receive payment, we will proceed with preparing and transmitting the agency record.

ESSER & SANDBERG, PLLC
Attorneys at Law
520 East Main Street
Pullman, Washington 99163
Phone: (509) 332-7692
Fax: (509) 334-2205

TIMOTHY ESSER*
ROGER J. SANDBERG

*ALSO ADMITTED IN IDAHO and OREGON

PEGGY LYND
Office Administrator / Paralegal

May 25, 2010

To Whom It May Concern:

I write this at the request of David Brown.

On the date that you received your ticket, I was in my office, which sits on the Southeast corner of our building, which is located at 520 E. Main St. The exterior walls of my office are glass, so I have a clear view of the street. I heard a police siren that sounded as if it were coming from a patrol car driving East on Paradise Street. I looked up and simultaneously saw your car stopped in the eastbound left-hand lane of Main Street, attempting to turn into my law firm's parking lot, with its left turn signal on waiting for west-bound traffic to clear, and saw the patrol car approaching your car from behind. I then heard the officer's voice come over his speaker saying "Pull over to the right." Your car then immediately began moving towards the intersection of Main Street and Spring Street, where I lost sight of it. You later came into my office and told me that you thought the officer had said, "Pull over through the light."

I declare under penalty of perjury ~~under the laws~~ of the State of Washigton that the foregoing is true.

Roger Sandberg

Copy

WASHINGTON STATE UNIVERSITY

Office of Student Conduct

12 April 2010

Mr. David J. Brown
345 NW Parr Dr
Pullman, WA 99163

Dear Mr. Brown

On 8 April, 2010, the Washington State University Conduct Board was convened to hear charges that you had violated provisions of the University's Standards of Conduct for Students. You were present at the hearing.

You were charged with the following violations:

> **WAC 504-26-204 Abuse of self or others.** Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including oneself.
>
> **WAC 504-26-203 Disruption.** Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities when the conduct occurs on university premises or is directed toward community members by any means including use of telephone, computer, or some other medium.
>
> **WAC 504026-207 Failure to comply with university officials or law enforcement officers.** Failure to comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

The Conduct Board recorded your plea of *Not Responsible* for each of the violations charged.

At the hearing, the Conduct Board heard testimony from Associate Dean of the Business School, David Sprott, MBA students E.H., A.F., and you. Based on the testimonies offered at the hearing, as well as the contents of the file compiled by the Office of Student Conduct in the course of its investigation, the Conduct Board made the following findings of fact:

> You began the MBA two-year program at Washington State University in August 2009 by attending the three-week orientation program. The Conduct Board noted that early in your tenure in the program, you seemed to be reacting in a strange manner. We noted that you sent emails to Associate Dean Sprott and to Professor Yoshi Smith in which you commented on your responses to the presentations each had made to your cohort
>
> For example, on 3 August 2009, in an email to Associate Dean David Sprott you apologized for sending him "a vibe which I surely do not truly feel and you surely you do not want to deal with"; you also told him that your life, "at this point and in the past year or so has taken a few dark turns." Five days later, on 8 August 2009, you sent an email to Professor Smith after her presentation to the cohort. This email included the phrase " I have certain personality problems and issues which should be addressed." Dean Sprott and Professor Smith found these emails worrisome enough to contact Cheryl Oliver, the director of graduate programs.
>
> Early the next month, (2 September 2009), one of your fellow students reported to following incident to Cheryl Oliver:
>
> > David Brown came up to me after class and asked if he could talk to me and as soon as I said yes, he went off on me, yelling at me and telling me he didn't appreciate the way I've disrespected him by making fun or him and the way he dressed. I tried figuring out what I'd done to upset him, but he was so angry he wouldn't even let me talk. The thing is, I can't think of anything I've said or done the whole time I've been here at school that would remotely resemble poking fun at anyone, let alone David and the way he dresses.... Do you think I should be worried about this?

Three weeks later (on 23 September 2009), you sent the following email to Professor Kenneth Butterfield:

> Hello sir, my name is David Brown, I am in your MgtOp 593 class. If you don't remember me, perhaps it would ring a bell to remind you that I would be the one you consistently harass and disrespect. I am writing you this email to inform you that I will not be putting up with your disrespectful comments anymore. If you have something to say to me about me or my behavior, please say that one on one to me or email me with your thoughts and concerns. As far as I am concerned you are completely out of line, and everyone in the class has witnessed it. I am paying thousands of dollars to take these courses, and I do not deserve to put up with someones [sic] horrible disrespect. It is your job to teach the class, not offer your opinions on any student in front of the entire class. As far as I am concerned, I think you need to just do your job - and teach. If this persists and you cannot seem to simply speak to me about something you may have a problem with, then I will be taking this up with your coworkers and superiors. I don't want to make this some giant issue and problematic experience for both of our lives, but unfortunately you seem to be unable to simply teach the class and keep your incredibly disrespectful comments to yourself. Please contact me with your thoughts on this matter.

About two weeks after that (on 6 October 2009), according to Professor Butterfield,

> David [Brown] approached me right after class in front of the classroom (although initially not in front of other students) in a very aggressive and confrontational manner. He appeared quite agitated and angry, with his first words being "What is your problem?" He then proceeded to accuse me of much of what was in his previous email—constantly harassing him and treating him disrespectfully.

Things seem to settle down for the rest of the Fall semester. However, on 23 January 2010, you left *four* voicemail messages on a female student's phone. The nature of the messages was such that her mother contacted the Director of graduate program to complain.

On the 11 February 2010, following a meeting with Raul Sanchez of the Center for Human Rights, you sent an email to five professors in the MBA program:

> I have been experiencing extreme levels of disrespect and harassment from fellow student E. H.. I believe that he is completely out of line and I wish for this to stop, considering that I am a customer of yours. I have been putting up with his actions toward me for the length of the program and am sick of it. I do not believe that any of you are responsible for his actions, but I did want to notify you of this issue and ask that in the future, if you notice this negative treatment in class, please be willing to help me and do what you can within reason to stop it. I am sorry that you have to be involved in this, but I feel that I am being treated extremely poorly and need your help due to your positions over the both of us. Once again, sorry that this is becomming [sic] and [sic] issue, but he has said or done something extremely disrespectful on a daily basis for months now, and I need any help I can get to stop him.

One of the professors forwarded this email to the Associate Dean, saying, "I have not noticed any inappropriate behavior in my class from any of my current students."

Following this email, Associate Deans David Whidbee and David Sprott and the Director of the graduate program, Cheryl Oliver met with you. At that meeting, you apologized for causing trouble and promised not to cause anymore trouble. Further, according to Ms Oliver's notes from the meeting, *"David could not articulate any specific incidents but insisted that general comments made by the other student during class time were aimed at him."*

On the same day, one of the students in the MBA program complained to the Director of Graduate studies, asking that someone in authority ask why you,

> feel the need to get up grab all [your] stuff, shove people out of the way, and move to a different seat in the room. I have to say that I was so uncomfortable that I could not pay attention to the rest of the class. My heart was pounding so fast that you would have thought I was running a marathon. He [also] got up and moved to a different seat in MIS this morning (quietly), but it was still distracting and strange to do with only 10min left in class. [Another student] asked him about it before acctg started, and his reason was because "he felt like everyone was staring at him," which I can assure you is definitely not happening during class. Then with about 10 or 15 minutes let [sic] in ACCTG he got up, kicked his chair and [another student's] chair, grabbed all of his things very loudly, pushed A. and B. out of his way and moved to the other side of the room.

On 3 March 2010, Dr. Harry Turtle spoke with Deans Sprott and Whidbee and Cheryl Oliver. Dr. Turtle explained that he had been administering an exam to his class when you appeared agitated and left the classroom several times. According to Cheryl Oliver's account of the conversation, Dr. Turtle said that even though he had asked you not to leave the room, you continued to do so. After class, two other students approached Dr. Turtle and said that your constant interruption of the class had made them nervous.

A week later, on 10 March 2010, Dean David Sprott sent you a letter mentioning your behavior during the exam in Dr. Turtle's class and warning you that it would not tolerate "additional disruptive behavior or other violations of the Student Code of Conduct." You responded:

> Hi Dr.
> You are right, I really need to shape up. But at the same time please realize that students are basically ganging up on me and complaining in groups about anything they can. At the same time, it is my fault for becoming an enemy and a target. Everything I came to your office about was 100 percent true and was actually happening.
>
> But once again, I blame myself for getting on others' bad sides. I promise you that I will perform to my best ability and not offend others, while handling any issue that arises in an adult and responsible manner. From my end, I will stay in line and in order. But please notice, that what is happening to me, may require equal attention, the only difference in the power of numbers. I do promise that I will do as you ask, and notice that I am part of an intimate group of students who all deserve to be treated well and respected. I will perform and engage them all responsibly and respectfully in all situations.

On 22 March 2010, Director of Graduate Studies Cheryl Oliver received a bouquet of flowers in a vase "from D. Bizzle." She suspected that they could be from you. When she called the florist, she confirmed her suspicion.

The next day (on 23 March 2010), two women in the MBA program came to Ms Oliver's office. According to Oliver's notes,

> One of them was crying and shaking. She said that last fall she had numerous encounters wherein David had emailed or called her saying he had to meet with her. He also went to her office. She accepted his first meeting invitation as she did not know him and when they met he had no content to discuss. After subsequent requests, she asked him to stop contacting her at work.

This student was upset because you had contacted via FACEBOOK—indicating that you knew what kind of car she drove and where she parked. That same day, you lingered after your class until she came into the room for her class. You came up behind her and began to rub her shoulder. You told us that, as a joke, you stood behind her in a way so that when she turned, she would not see you.

On 1 April 2010, in your Management Information Class (MIS), you made statements that other students judged were irrelevant and threatening. According to a student's complaint,

> This morning in Dr. Yoshi's MIS class David Brown responded to a question regarding business intelligence and analytics. However his response was not regarding the class topics. He basically said: "You just have to realize that a lot of times you can't do something because you are just dumb. You need to look in the mirror and say that they reason you can't do it isn't anything other than you are really dumb. It's like if you kill someone. You can't say, I killed them for some reason. You have to look in the mirror and say I killed them because I am dumb."
>
> Dr. Yoshi tried to cut him off several times but he kept talking over her. He was also making eye contact with students while he was talking which seemed odd. I believe that his speech was directed at the students and not a response to the question. He was also laughing for no reason at the beginning of class. I feel uncomfortable being in the same room with him. He creates a hostile environment which affects my learning and performance.

In addition, following the incident in the MIS class, four other students complained to the Dean's Office, via email, about your comments: "many [students] interpreted his comments an actions as a threat. As a result, many of us feel uncomfortable to be around him, and do not feel comfortable going to class them David is in this state." As a result of the students' reactions to your comments, the next class (accounting) was cancelled for the day

During the hearing, we asked you about some of these events. You told us that several students in the MBA program were exploiting the student conduct process just to get rid of you. We asked you why they would do that? You told us it was because you were "unpopular"; the people who were picking on you were the "popular" kids. But you offered no evidence to the Board that anyone had treated you unfairly.

You did admit that you had sometimes moved around during classes. We asked you why. You told us that you felt that students were all staring at you. It did not seem to matter to you that your movements were disrupting other students' ability to pay attention.

We asked why you had left Dr. Turtle's class during an exam. You said that the exam was long (1.5 hours) and that twice you left to go to the bathroom and once you left to get an orange drink. When it was suggested to you that leaving the room during the exam was inappropriate behavior because the instructor

might think you were cheating, you seemed surprised. We suggested to you that any college student would know better than to leave an exam without permission and you told us that you thought graduate school was "more causal" than undergraduate programs.

You denied that you had left Dr. Turtle's exam after being told not to; in fact, you said that Dean Sprott had intentionally lied about this to the Conduct Board; that Dr. Turtle did not tell you to stop leaving until you got up to get a drink from the vending machine in the hall. Yet, we noted that when responded to the "final warning" sent by Dean Sprott, in which the exam incident was described, you did not mention that the charge was untrue. Instead, you responded with an email, "you are right, I really need to shape up."

We asked you why you had made the comments about "killing" in the MIS class (on the first of April). You told us a quite elaborate story about how your comments were relevant (implying that those who did not think they were relevant were wrong) because you were talking about ethics—and "ethical decision making is very crucial to this topic" of analytics. In talking about killing, "I was merely attempting to offer a good academic thought." Your account made no sense to the members of the Board. Obviously, the instructor found that your contribution inappropriate—according to a witness, Dr. Yoshi tried to get you to stop at several points. Indeed, you seemed proud of the fact that you ignored the instructor as she "*tried* to interrupt" you. It seemed to us that when an instructor "tries to interrupt a student," the student should stop talking. You apparently refused to do that (thereby failing to comply with a university official.)

The members of the Conduct Board were alarmed when you suggested to us that Associate Dean David Sprott was intentionally lying to the Conduct Board because he was involved in a conspiracy with the "popular students" to drum you out of the MBA program. In the judgment of the Board members, Dean Sprott was not lying.

Indeed, it seemed to us that, from the beginning of your graduate career here, you have misinterpreted the behavior and intentions of others. When we asked you what others were doing that disrespected you, you could not provide any examples. We concluded that here is no evidence that your professors or other students were disrespecting you.

It is certainly no violation of the Student Conduct Code to harbor beliefs. However, when you act on your beliefs in ways that lessen professors' ability to teach and students' ability to learn, this violates the University's policy on disruption.

Mr. Brown, your responses to the normal events of graduate school have been inappropriate on several occasions: Sending strange emails, leaving strange voice mails, sending flowers using a false name, moving around the classroom and coming and going from an exam and other behaviors have scared your fellow MBA students. Because of your inappropriate behavior, many of your fellow students have found it difficult (and in some cases, impossible) to pay attention during class.

The Conduct Board, thus finds that there is sufficient evidence, the preponderance of which proves that your behavior has, on several occasions, proved disruptive and, when others have tried to mitigate the disruptions you've caused, you have failed to follow their direction. Therefore, while the Conduct Board finds you *Not Responsible* for violating WAC 504-26-204 (Abuse of self or others), we find you *Responsible* for violating WAC 504-26-203 (Disruption or obstruction) and WAC 504-26-207 (Failure to comply with University Officials or Law enforcement officers).

Because of your behavior, the Conduct Board assigns the following sanctions:

> You are suspended from the University until at least January 2011. In December 2010, you may petition for readmission to the University. In your petition you must offer evidence that you are prepared to participate in a responsible manner.
>
> Because your unpredictable and inappropriate behavior has caused fear on the part of other students and even faculty, and because we find that their fear is reasonable, the Trespass Admonition that was issued to you on 2 April 2010 by Assistant Vice President Melynda Huskey, is continued. Trespass means that your privilege to be on the WSU campus has been revoked. If you are found on campus, you will be subject to arrest and prosecution for Criminal Trespass under RCW 9A.52.070 or 9A.52.080. If you

have a legitimate business need with Washington State University you must be escorted by an official with Washington State University, and arrangements for such escort must be done prior to you entering the campus. This means you must make arrangements with either the Office of the Dean of Students at 509-335-5757 or WSU Police at 509-335-8548, before coming on campus for any reason.

If you do not re-enroll at WSU, the Trespass Admonition will remain in effect until June 2011, the point at which the other members of your cohort will complete their program.

You have the right to appeal the decision in this case and/or the sanction. If you choose to appeal, you must do so in writing (stating the grounds and arguments) to the Office of Student Conduct, within twenty-one days of the date of this letter. If you choose not to appeal, this decision becomes final.

The following are grounds for appeal:

a. a procedural error which materially affected the decision;
b. new evidence not previously available which would have materially affected the decision;
c. the decision was not supported by substantial evidence;
d. the standards of conduct do not apply to the alleged conduct;
e. the severity or appropriateness of the sanctions.

If you choose to appeal the decisions or the sanctions of the University Conduct Board, the burden of proof shifts from the University to you. The appeal process is a review by the University Appeals Board of the record of the hearing plus the letter of appeal, including any written argument(s) submitted by you, and new evidence if that is the ground for appeal. It is not a new hearing.

If you have questions concerning the decision of the Board, the nature of the sanctions, or the appeal process, please contact the Office of Student Conduct or the Dean of Students' Office.

Sincerely,

Lisa J. McIntyre
Chair, University Conduct Board

cc Dr. Chris Wuthrich, Dean of Students

[illegible]

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 NOTICE OF MOTION HEARING

TO THE CLERK OF THE ABOVE-ENTITLED COURT

AND TO: Roger J. Sandberg, attorney for David J. Brown

The clerk is requested to place the following motion on the docket for the day indicated:

MOTION: WSU's Motion to Dismiss for Lack of Subject Matter Jurisdiction

HEARING DATE: July 30, 2010, at 8:30 a.m.

DATED this 23rd day of July, 2010.

ROBERT M. McKENNA
Attorney General

Danielle A. Hess, WSBA 22307
Assistant Attorney General
Attorney for Defendant WSU
(509) 335-2636

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION UNDER RCW 34.05.542(2)

I. INTRODUCTION

Respondent Washington State University (WSU) moves to dismiss David Brown's petition for review because he failed to file it with the Court within thirty (30) days of service of WSU's final agency order as required by RCW 34.05.542(2).[1] Therefore, the Court does not have subject matter jurisdiction over Mr. Brown's appeal.

II. BACKGROUND

Mr. Brown is a student in WSU's Master of Business Administration (M.B.A.) program. On April 12, 2010, the University Conduct Board (Conduct Board) found

[1] RCW 34.05.542(2) provides that "A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order."

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

Mr. Brown responsible for violating WAC 504-26-203[2] and WAC 504-26-207.[3] The Conduct Board suspended Mr. Brown until January 2011 and trespassed him from campus until that time. *See* Exhibit B to Declaration of Edwin Hamada.

Mr. Brown appealed, and on May 31, 2010, the University Appeal Committee issued an order upholding the University Conduct Board's decision. The order was mailed June 1, 2010. *See* Declaration of Edwin Hamada.

Mr. Brown's attorney, Roger Sandberg, served Mr. Brown's petition for judicial review on the WSU Division of the Office of the Attorney General on July 1, 2010. However, he did not file the petition with the Whitman County Superior Court until July 6, 2010.

III. LEGAL ARGUMENT

An appeal from an administrative order invokes the limited appellate jurisdiction of the superior court. The superior court does not acquire subject matter jurisdiction over the appeal unless the petitioner files the petition for review in superior court and serves the petition on all parties. "Both of these steps must be accomplished within '30 days after the service of the final decision of the agency.'" *City of Seattle v. Pub. Empl. Relations Comm'n,* 116 Wn.2d 923, 927, 809 P.2d 1377 (1991), citing former RCW 34.04.130(2). Service of the agency decision is complete when the agency mails the decision to the parties. *Id.* at 927; *see also* RCW 34.05.010(19) ("Service by mail is complete upon deposit in the United States mail.").

---

[2] WAC 504-26-203 provides:

> Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises or is directed toward community members by any means including use of telephone, computer, or some other medium.

[3] WAC 504-26-207 provides:

> Failure to comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

In *Clymer v. Employment Security Department*, 82 Wn. App. 25, 917 P.2d 1091 (1996), the petitioner's attorney left a petition for review with the process server. However, the process server did not file it on time. The petitioner argued that he had substantially complied with the statutory filing requirement because he had timely served the petition on the other parties. The court rejected this argument, stating:

> A failure to comply with the filing requirement of RCW 34.05.542(2), resulting from a messenger's failure or refusal to accept a Petition for Review for filing, does not constitute substantial compliance. Nor does *serving* the Petition on other parties constitute substantial compliance with the *filing* requirement.

Id. at 29. The court also rejected the petitioner's argument that "belated compliance" with the filing requirement constituted "substantial compliance." *Id.* at 29.

The Rules of Civil Procedure do not apply to petitions for judicial review of agency action, except where specifically authorized by the Washington Administrative Procedure Act (WAPA). *Diehl v. W. Wash. Growth Mgmt. Hearings Bd.,* 153 Wn.2d 207, 215-16, 103 P.3d 193 (2004); *see also* RCW 34.05.510 ("Relationship between this chapter and other judicial review authority"). Furthermore, because the superior court civil rules are procedural rules, they apply only after the commencement of an action and "thus do not purport to extend subject matter jurisdiction of the court." *Id.* at 216 (citing *Vasquez v. Dep't of Labor & Indus.,* 44 Wn. App. 379, 383, 722 P.2d 854 (1986)).

In this case, WSU's final decision was the decision of the University Appeal Committee. This decision was mailed to Mr. Brown on June 1, 2010. *See* Declaration of Edwin Hamada. Mr. Brown therefore had thirty (30) days from June 1, 2010, or until July 1, 2010, to serve and file his petition for review. However, he did not file his petition for review with this Court until July 6, 2010. Because Mr. Brown did not meet the requirements of RCW 34.05.542(2), he did not properly invoke the subject matter jurisdiction of this Court.

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

IV. CONCLUSION

Based on the foregoing, WSU respectfully requests that the Court dismiss Mr. Brown's petition for review for lack of subject matter jurisdiction.

DATED this 23rd day of July, 2010.

ROBERT M. McKENNA
Attorney General

Danielle A. Hess, WSBA 22307
Assistant Attorney General
Attorney for Defendant WSU
(509) 335-2636

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN,

Petitioner,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

NO. 10-2-00174-1

DECLARATION OF EDWIN HAMADA

I, Edwin Hamada, hereby declare and state:

1. I am the Associate Director for Residence Life at Washington State University and also served as the Chair of the University Appeal Committee in the student conduct matter involving David J. Brown. I am over the age of 18, am competent to be a witness herein and make the following declaration based upon my own personal knowledge.

2. On June 1, 2010, I mailed via first class mail a true and correct copy of the May 31, 2010, University Appeal Committee decision pertaining to Mr. Brown, which is attached to this declaration as Exhibit A, to Mr. Brown's address at 345 NW Parr Drive, Pullman, WA 99163. Thus, the June 1, 2010, date of mailing stated in the decision is correct.

3. Attached as Exhibit B is a true and correct copy of the April 12, 2010, decision of the University Conduct Board decision regarding Mr. Brown.

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

I hereby certify under penalty of perjury under the laws of the state of Washington that the above declaration is true and correct to the best of my knowledge.

DATED this 23 day of July, 2010, at Pullman, Washington.

Edwin Hamada

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

WASHINGTON STATE UNIVERSITY
Residence Life

David J. Brown
345 NW Parr Drive
Pullman, WA 99163

5/31//10

Dear David:

On 05/19/10, the University Appeal Committee met to consider your appeal of the University Conduct Board's decision issued on 04/12/10. The Conduct Board found you responsible for violating WSU regulations, including WAC 504-26-203 and WAC 504-26-207. On 05/14/10, the Division of Student Affairs, Equity and Diversity received your appeal.

The appeal is a review of the record and the appeal letter; it is not a new hearing as outlined in WAC 504-26-407. According to WAC 504-26-407, the appellate board considers:

(a) Whether the university conduct board hearing was conducted fairly and in conformity with prescribed procedures;
(b) Whether the decision was based on substantial information;
(c) Whether the sanction(s) imposed were appropriate for the violation;
(d) New information sufficient to alter a decision or other relevant facts not known to the person appealing at the time of the original hearing.

Your appeal describes that it is based on (a), (b), and (c). Your appeal also indicated that it is based on your belief that the standards of conduct do not apply to the alleged conduct.

The appeal committee carefully considered the contents of your appeal letter and the record. We concluded that contents of your appeal were not compelling and consequently uphold the decision and the sanctions of the Conduct Board.

For the purpose of clarifying our decision, we note that the basis for finding you responsible for violating WAC 504-26-207 in the initial order is not limited to your classroom interaction with Dr. Yoshi on 04/01/10.

PO Box 641724, Pullman [illegible]
509-335-1227 • Fax: [illegible]

EXHIBIT A

Hamada Decl.
Page 1 of 2

Having considered whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act, we have determined that no such action is necessary.

Under Washington law, this final order can be appealed to Whitman County Superior Court by filing a petition for review with that court within thirty (30) days from the date that this final order was placed in the mail (RCW 34.05.010(19) and RCW 34.05.514(2)). This order will be placed in the mail on 06/01/10.

Sincerely,

Edwin Hamada
Associate Director
Residence Life

Anita Cory
Director
Center for Fraternity and Sorority Life

cc: Dr. Michael J. Tate, Vice President for Student Affairs, Equity and Diversity
Dr. Chris Wuthrich, Dean of Students
file

PO Box 641724, Pullman, WA 99164-1724
509-335-1227 • Fax: 509-335-3415 • [illegible]

EXHIBIT A

Hamada Decl.
Page 2 of 2

Copy

WASHINGTON STATE UNIVERSITY

Office of Student Conduct

12 April 2010

Mr. David J. Brown
345 NW Parr Dr
Pullman, WA 99163

Dear Mr. Brown

On 8 April, 2010, the Washington State University Conduct Board was convened to hear charges that you had violated provisions of the University's Standards of Conduct for Students. You were present at the hearing.

You were charged with the following violations:

WAC 504-26-204 Abuse of self or others. Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including oneself.

WAC 504-26-203 Disruption. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities when the conduct occurs on university premises or is directed toward community members by any means including use of telephone, computer, or some other medium.

WAC 504026-207 Failure to comply with university officials or law enforcement officers. Failure to comply with lawful directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

The Conduct Board recorded your plea of *Not Responsible* for each of the violations charged.

At the hearing, the Conduct Board heard testimony from Associate Dean of the Business School, David Sprott, MBA students E.H., A.F., and you. Based on the testimonies offered at the hearing, as well as the contents of the file compiled by the Office of Student Conduct in the course of its investigation, the Conduct Board made the following findings of fact:

You began the MBA two-year program at Washington State University in August 2009 by attending the three-week orientation program. The Conduct Board noted that early in your tenure in the program, you seemed to be reacting in a strange manner. We noted that you sent emails to Associate Dean Sprott and to Professor Yoshi Smith in which you commented on your responses to the presentations each had made to your cohort.

For example, on 3 August 2009, in an email to Associate Dean David Sprott you apologized for sending him "a vibe which I surely do not truly feel and you surely you do not want to deal with"; you also told him that your life, "at this point and in the past year or so has taken a few dark turns." Five days later, on 8 August 2009, you sent an email to Professor Smith after her presentation to the cohort. This email included the phrase " I have certain personality problems and issues which should be addressed." Dean Sprott and Professor Smith found these emails worrisome enough to contact Cheryl Oliver, the director of graduate programs.

Early the next month, (2 September 2009), one of your fellow students reported to following incident to Cheryl Oliver:

> David Brown came up to me after class and asked if he could talk to me and as soon as I said yes, he went off on me, yelling at me and telling me he didn't appreciate the way I've disrespected him by making fun or him and the way he dressed. I tried figuring out what I'd done to upset him, but he was so angry he wouldn't even let me talk. The thing is, I can't think of anything I've said or done the whole time I've been here at school that would remotely resemble poking fun at anyone, let alone David and the way he dresses.... Do you think I should be worried about this?

260 Lighty Services Building, PO Box 641062, Pullman, WA 99164-1062
509-335-4532 • Fax: 509-335-4841 • conduct@wsu.edu www.studentaffairs.wsu.edu

EXHIBIT B

Hamada Decl.
Page 1 of 5

Three weeks later (on 23 September 2009), you sent the following email to Professor Kenneth Butterfield:

> Hello sir, my name is David Brown, I am in your MgtOp 593 class. If you don't remember me, perhaps it would ring a bell to remind you that I would be the one you consistently harass and disrespect. I am writing you this email to inform you that I will not be putting up with your disrespectful comments anymore. If you have something to say to me about me or my behavior, please say that one on one to me or email me with your thoughts and concerns. As far as I am concerned you are completely out of line, and everyone in the class has witnessed it. I am paying thousands of dollars to take these courses, and I do not deserve to put up with someones [sic] horrible disrespect. It is your job to teach the class, not offer your opinions on any student in front of the entire class. As far as I am concerned, I think you need to just do your job - and teach. If this persists and you cannot seem to simply speak to me about something you may have a problem with, then I will be taking this up with your coworkers and superiors. I don't want to make this some giant issue and problematic experience for both of our lives, but unfortunately you seem to be unable to simply teach the class and keep your incredibly disrespectful comments to yourself. Please contact me with your thoughts on this matter.

About two weeks after that (on 6 October 2009), according to Professor Butterfield,

> David [Brown] approached me right after class in front of the classroom (although initially not in front of other students) in a very aggressive and confrontational manner. He appeared quite agitated and angry, with his first words being "What is your problem?" He then proceeded to accuse me of much of what was in his previous email—constantly harassing him and treating him disrespectfully.

Things seem to settle down for the rest of the Fall semester. However, on 23 January 2010, you left *four* voicemail messages on a female student's phone. The nature of the messages was such that her mother contacted the Director of graduate program to complain.

On the 11 February 2010, following a meeting with Raul Sanchez of the Center for Human Rights, you sent an email to five professors in the MBA program:

> I have been experiencing extreme levels of disrespect and harassment from fellow student E. H.. I believe that he is completely out of line and I wish for this to stop, considering that I am a customer of yours. I have been putting up with his actions toward me for the length of the program and am sick of it. I do not believe that any of you are responsible for his actions, but I did want to notify you of this issue and ask that in the future, if you notice this negative treatment in class, please be willing to help me and do what you can within reason to stop it. I am sorry that you have to be involved in this, but I feel that I am being treated extremely poorly and need your help due to your positions over the both of us. Once again, sorry that this is becomming [sic] and [sic] issue, but he has said or done something extremely disrespectful on a daily basis for months now, and I need any help I can get to stop him.

One of the professors forwarded this email to the Associate Dean, saying, "I have not noticed any inappropriate behavior in my class from any of my current students."

Following this email, Associate Deans David Whidbee and David Sprott and the Director of the graduate program, Cheryl Oliver met with you. At that meeting, you apologized for causing trouble and promised not to cause anymore trouble. Further, according to Ms Oliver's notes from the meeting, "*David could not articulate any specific incidents but insisted that general comments made by the other student during class time were aimed at him.*"

On the same day, one of the students in the MBA program complained to the Director of Graduate studies, asking that someone in authority ask why you,

> feel the need to get up grab all [your] stuff, shove people out of the way, and move to a different seat in the room. I have to say that I was so uncomfortable that I could not pay attention to the rest of the class. My heart was pounding so fast that you would have thought I was running a marathon. He [also] got up and moved to a different seat in MIS this morning (quietly), but it was still distracting and strange to do with only 10min left in class. [Another student] asked him about it before acctg started, and his reason was because "he felt like everyone was staring at him," which I can assure you is definitely not happening during class. Then with about 10 or 15 minutes let [sic] in ACCTG he got up, kicked his chair and [another student's] chair, grabbed all of his things very loudly, pushed A. and B. out of his way and moved to the other side of the room.

On 3 March 2010, Dr. Harry Turtle spoke with Deans Sprott and Whidbee and Cheryl Oliver. Dr. Turtle explained that he had been administering an exam to his class when you appeared agitated and left the classroom several times. According to Cheryl Oliver's account of the conversation, Dr. Turtle said that even though he had asked you not to leave the room, you continued to do so. After class, two other students approached Dr. Turtle and said that your constant interruption of the class had made them nervous.

EXHIBIT B

Hamada Decl.
Page 2 of 5

A week later, on 10 March 2010, Dean David Sprott sent you a letter mentioning your behavior during the exam in Dr. Turtle's class and warning you that it would not tolerate "additional disruptive behavior or other violations of the Student Code of Conduct." You responded:

> Hi Dr.
> You are right, I really need to shape up. But at the same time please realize that students are basically ganging up on me and complaining in groups about anything they can. At the same time, it is my fault for becoming an enemy and a target. Everything I came to your office about was 100 percent true and was actually happening.
>
> But once again, I blame myself for getting on others' bad sides. I promise you that I will perform to my best ability and not offend others, while handling any issue that arises in an adult and responsible manner. From my end, I will stay in line and in order. But please notice, that what is happening to me, may require equal attention, the only difference in the power of numbers. I do promise that I will do as you ask, and notice that I am part of an intimate group of students who all deserve to be treated well and respected. I will perform and engage them all responsibly and respectfully in all situations.

On 22 March 2010, Director of Graduate Studies Cheryl Oliver received a bouquet of flowers in a vase "from D. Bizzle." She suspected that they could be from you. When she called the florist, she confirmed her suspicion.

The next day (on 23 March 2010), two women in the MBA program came to Ms Oliver's office. According to Oliver's notes,

> One of them was crying and shaking. She said that last fall she had numerous encounters wherein David had emailed or called her saying he had to meet with her. He also went to her office. She accepted his first meeting invitation as she did not know him and when they met he had no content to discuss. After subsequent requests, she asked him to stop contacting her at work.

This student was upset because you had contacted via FACEBOOK—indicating that you knew what kind of car she drove and where she parked. That same day, you lingered after your class until she came into the room for her class. You came up behind her and began to rub her shoulder. You told us that, as a joke, you stood behind her in a way so that when she turned, she would not see you.

On 1 April 2010, in your Management Information Class (MIS), you made statements that other students judged were irrelevant and threatening. According to a student's complaint,

> This morning in Dr. Yoshi's MIS class David Brown responded to a question regarding business intelligence and analytics. However his response was not regarding the class topics. He basically said: "You just have to realize that a lot of times you can't do something because you are just dumb. You need to look in the mirror and say that they reason you can't do it isn't anything other than you are really dumb. It's like if you kill someone. You can't say, I killed them for some reason. You have to look in the mirror and say I killed them because I am dumb."
>
> Dr. Yoshi tried to cut him off several times but he kept talking over her. He was also making eye contact with students while he was talking which seemed odd. I believe that his speech was directed at the students and not a response to the question. He was also laughing for no reason at the beginning of class. I feel uncomfortable being in the same room with him. He creates a hostile environment which affects my learning and performance.

In addition, following the incident in the MIS class, four other students complained to the Dean's Office, via email, about your comments: "many [students] interpreted his comments an actions as a threat. As a result, many of us feel uncomfortable to be around him, and do not feel comfortable going to class them David is in this state." As a result of the students' reactions to your comments, the next class (accounting) was cancelled for the day

During the hearing, we asked you about some of these events. You told us that several students in the MBA program were exploiting the student conduct process just to get rid of you. We asked you why they would do that? You told us it was because you were "unpopular"; the people who were picking on you were the "popular" kids. But you offered no evidence to the Board that anyone had treated you unfairly.

You did admit that you had sometimes moved around during classes. We asked you why. You told us that you felt that students were all staring at you. It did not seem to matter to you that your movements were disrupting other students' ability to pay attention.

We asked why you had left Dr. Turtle's class during an exam. You said that the exam was long (1.5 hours) and that twice you left to go to the bathroom and once you left to get an orange drink. When it was suggested to you that leaving the room during the exam was inappropriate behavior because the instructor

EXHIBIT B

Hamada Decl.
Page 3 of 5

might think you were cheating, you seemed surprised. We suggested to you that any college student would know better than to leave an exam without permission and you told us that you thought graduate school was "more causal" than undergraduate programs.

You denied that you had left Dr. Turtle's exam after being told not to; in fact, you said that Dean Sprott had intentionally lied about this to the Conduct Board; that Dr. Turtle did not tell you to stop leaving until you got up to get a drink from the vending machine in the hall. Yet, we noted that when responded to the "final warning" sent by Dean Sprott, in which the exam incident was described, you did not mention that the charge was untrue. Instead, you responded with an email, "you are right, I really need to shape up."

We asked you why you had made the comments about "killing" in the MIS class (on the first of April). You told us a quite elaborate story about how your comments were relevant (implying that those who did not think they were relevant were wrong) because you were talking about ethics—and "ethical decision making is very crucial to this topic" of analytics. In talking about killing, "I was merely attempting to offer a good academic thought." Your account made no sense to the members of the Board. Obviously, the instructor found that your contribution inappropriate—according to a witness, Dr. Yoshi tried to get you to stop at several points. Indeed, you seemed proud of the fact that you ignored the instructor as she "*tried* to interrupt" you. It seemed to us that when an instructor "tries to interrupt a student," the student should stop talking. You apparently refused to do that (thereby failing to comply with a university official.)

The members of the Conduct Board were alarmed when you suggested to us that Associate Dean David Sprott was intentionally lying to the Conduct Board because he was involved in a conspiracy with the "popular students" to drum you out of the MBA program. In the judgment of the Board members, Dean Sprott was not lying.

Indeed, it seemed to us that, from the beginning of your graduate career here, you have misinterpreted the behavior and intentions of others. When we asked you what others were doing that disrespected you, you could not provide any examples. We concluded that here is no evidence that your professors or other students were disrespecting you.

It is certainly no violation of the Student Conduct Code to harbor beliefs. However, when you act on your beliefs in ways that lessen professors' ability to teach and students' ability to learn, this violates the University's policy on disruption.

Mr. Brown, your responses to the normal events of graduate school have been inappropriate on several occasions: Sending strange emails, leaving strange voice mails, sending flowers using a false name, moving around the classroom and coming and going from an exam and other behaviors have scared your fellow MBA students. Because of your inappropriate behavior, many of your fellow students have found it difficult (and in some cases, impossible) to pay attention during class.

The Conduct Board, thus finds that there is sufficient evidence, the preponderance of which proves that your behavior has, on several occasions, proved disruptive and, when others have tried to mitigate the disruptions you've caused, you have failed to follow their direction. Therefore, while the Conduct Board finds you *Not Responsible* for violating WAC 504-26-204 (Abuse of self or others), we find you *Responsible* for violating WAC 504-26-203 (Disruption or obstruction) and WAC 504-26-207 (Failure to comply with University Officials or Law enforcement officers).

Because of your behavior, the Conduct Board assigns the following sanctions:

> You are suspended from the University until at least January 2011. In December 2010, you may petition for readmission to the University. In your petition you must offer evidence that you are prepared to participate in a responsible manner.
>
> Because your unpredictable and inappropriate behavior has caused fear on the part of other students and even faculty, and because we find that their fear is reasonable, the Trespass Admonition that was issued to you on 2 April 2010 by Assistant Vice President Melynda Huskey, is continued. Trespass means that your privilege to be on the WSU campus has been revoked. If you are found on campus, you will be subject to arrest and prosecution for Criminal Trespass under RCW 9A.52.070 or 9A.52.080. If you

EXHIBIT B

Hamada Decl.
Page 4 of 5

have a legitimate business need with Washington State University you must be escorted by an official with Washington State University, and arrangements for such escort must be done prior to you entering the campus. This means you must make arrangements with either the Office of the Dean of Students at 509-335-5757 or WSU Police at 509-335-8548, before coming on campus for any reason.

If you do not re-enroll at WSU, the Trespass Admonition will remain in effect until June 2011, the point at which the other members of your cohort will complete their program.

You have the right to appeal the decision in this case and/or the sanction. If you choose to appeal, you must do so in writing (stating the grounds and arguments) to the Office of Student Conduct, within twenty-one days of the date of this letter. If you choose not to appeal, this decision becomes final.

The following are grounds for appeal:

a. a procedural error which materially affected the decision;
b. new evidence not previously available which would have materially affected the decision;
c. the decision was not supported by substantial evidence;
d. the standards of conduct do not apply to the alleged conduct;
e. the severity or appropriateness of the sanctions.

If you choose to appeal the decisions or the sanctions of the University Conduct Board, the burden of proof shifts from the University to you. The appeal process is a review by the University Appeals Board of the record of the hearing plus the letter of appeal, including any written argument(s) submitted by you, and new evidence if that is the ground for appeal. It is not a new hearing.

If you have questions concerning the decision of the Board, the nature of the sanctions, or the appeal process, please contact the Office of Student Conduct or the Dean of Students' Office.

Sincerely,

Lisa J. McIntyre
Chair, University Conduct Board

cc Dr. Chris Wuthrich, Dean of Students

EXHIBIT B

Hamada Decl.
Page 5 of 5

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 AFFIDAVIT OF PERSONAL SERVICE

STATE OF WASHINGTON)
County of Whitman) ss.

Danielle A. Hess, on oath says:

1. I am an Assistant Attorney General and the attorney for Respondent Washington State University in the above-referenced matter.

2. On July 23, 2010, I served a true copy of a) Washington State University's Motion to Dismiss for Lack of Subject Matter Jurisdiction, b) Declaration of Edwin Hamada, c) Notice of Motion Hearing, and d) Declaration of Mailing, by personal delivery to Petitioner's attorney of record, Roger J. Sandberg, at his office at 520 East Main Street, Pullman, Washington.

I hereby certify under penalty of perjury under the laws of the state of Washington that the above declaration is true and correct to the best of my knowledge.

DATED this 23rd day of July, 2010, at Pullman, Washington.

Danielle A. Hess, WSBA 22307

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN,

Petitioner,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

NO. 10-2-00174-1

DECLARATION OF MAILING

I, Rita M. Haas, hereby declare and state as follows:

1. I am the Assistant to the Division Chief with the Office of the Attorney General, Washington State University Division.

2. On July 23, 2010, I sent to Petitioner David J. Brown, 18221 NE 21st Street, Redmond, Washington 98052, via U.S.P.S. mail, postage prepaid, a true and correct copy of a) Washington State University's Motion to Dismiss for Lack of Subject Matter Jurisdiction, b) Declaration of Edwin Hamada, c) Notice of Motion Hearing, and d) Affidavit of Personal Service.

I hereby certify under penalty of perjury under the laws of the state of Washington that the above declaration is true and correct to the best of my knowledge.

DATED this 23rd day of July, 2010, at Pullman, Washington.

Rita M. Haas

RITA M. HAAS

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

COPY
JUL 23 2010
WHITMAN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHITMAN

DAVID J. BROWN, Petitioner, and WASHINGTON STATE UNIVERSITY, Respondent.	**NO.** 10-2-00174-1 NOTICE OF INTENT TO WITHDRAW AS ATTORNEY OF RECORD

TO: Petitioner: DAVID BROWN
Respondent's Attorney: DANIELLE HESS

NOTICE IS HEREBY GIVEN that the undersigned attorney will withdraw from any further representation in the above-entitled matter effective 10 days from the date hereof.

Said withdrawal shall be effective without order of court unless an objection to said withdrawal is served on the withdrawing attorney at the below stated address prior to the effective date.

The name and last known address of the party represented hereby said attorney is as follows: David Brown, 18221 NE 21st Street, Redmond, WA 98052.

This matter not set for a Pretrial Conference or Trial.

DATED: This 22 day of July 2010.

ESSER & SANDBERG, PLLC
Attorneys for Petitioner

By _____
Roger Sandberg #39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHITMAN

DAVID J. BROWN, Petitioner, and WASHINGTON STATE UNIVERSITY, Respondent.	**NO.** 10-2-00174-1 NOTICE OF INTENT TO WITHDRAW AS ATTORNEY OF RECORD

TO: Petitioner: DAVID BROWN
Respondent's Attorney: DANIELLE HESS

NOTICE IS HEREBY GIVEN that the undersigned attorney will withdraw from any further representation in the above-entitled matter effective 10 days from the date hereof.

Said withdrawal shall be effective without order of court unless an objection to said withdrawal is served on the withdrawing attorney at the below stated address prior to the effective date.

The name and last known address of the party represented hereby said attorney is as follows: David Brown, 18221 NE 21st Street, Redmond, WA 98052.

This matter not set for a Pretrial Conference or Trial.

DATED: This 22 day of July 2010.

ESSER & SANDBERG, PLLC
Attorneys for Petitioner

By _____
Roger Sandberg #39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

ATTORNEY'S CERTIFICATE OF SERVICE

I certify that on this 22 day of July, 2010 at my direction a copy of the foregoing Notice of Intent to Withdraw as Attorney of Record was mailed by certified, return receipt requested and by first class mail to David Brown, 18221 NE 21st Street, Redmond, WA 98052.

Roger Sandberg

I certify that on this 22 day of July, 2010 I caused a copy of the foregoing Notice of Intent to Withdraw as Attorney of Record to be mailed to Danielle Hess, Attorney General's Office, 332 French Administration Building, PO Box 641031, Pullman, WA 99164-1031.

Roger Sandberg

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 NOTICE OF APPEARANCE

TO: David J. Brown, plaintiff, through his attorney, Roger Sandberg

YOU WILL PLEASE TAKE NOTICE that defendant Washington State University enters its appearance in the above-entitled action and requests that notice of any and all further proceedings in said action be served upon the undersigned attorney at the address stated below.

TRANSMISSION BY FACSIMILE DOES NOT CONSTITUTE SERVICE.

DATED this 8th day of July, 2010.

ROBERT M. MCKENNA
Attorney General

DANIELLE HESS, WSBA #22307
Assistant Attorney General
Attorneys for Defendant Washington State University

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

STATE OF WASHINGTON
WHITMAN COUNTY SUPERIOR COURT

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	NO. 10-2-00174-1 DECLARATION OF ANDREA SIMANSON

I, Andrea Simanson, hereby declare and state:

1. I am the Legal Assistant with the Office of the Attorney General, Washington State University Division. I am over the age of 18, am competent to be a witness herein, am not a party to this action, and make the following declaration based upon my own personal knowledge.

2. On July 8, 2010, I mailed via first class mail a true and correct copy of Respondent Washington State University's Notice of Appearance and Declaration to Roger Sandberg, Esser & Sandberg, 520 East Main Street, Pullman, WA 99163.

I hereby certify under penalty of perjury under the laws of the state of Washington that the above declaration is true and correct to the best of my knowledge.

DATED this 8th day of July, 2010, at Pullman, Washington.

Andrea Simanson

Andrea Simanson

ATTORNEY GENERAL OF WASHINGTON
332 French Administration Building
PO Box 641031
Pullman, WA 99164-1031
(509) 335-2636

COPY
JUL 06 2010
WHITMAN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR WHITMAN COUNTY

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	No. 10 2 00174 1 PETITION FOR REVIEW OF ADMINISTRATIVE DECISION

Petitioner David Brown, by and through his attorney Roger Sandberg, petitions the Court pursuant to RCW 34.05.514 et. seq. for review of the administrative decision of the Conduct Board of Washington State University resulting in the sanction of suspension and trespass. The Conduct Board found that Mr. Brown had committed two violations of the WSU Student Conduct Code, Disruption under WAC 504-25-203, and Failure to Comply with University Officials under WAC 504-26-207. The Office of Student Conduct failed to follow its prescribed procedure in the prosecution of these alleged violations; the order of the Conduct Board is unconstitutional; the Board's decision is not supported by substantial evidence; and the Board's order is arbitrary or capricious.

1. **Petitioner:** David Jesse Brown, 345 NW Parr Drive, Pullman, Washington 99163.

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

COPY
JUL 06 2010
WHITMAN COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR WHITMAN COUNTY

DAVID BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	No. 10 2 00174 1 ATTORNEY'S AFFIDAVIT OF SERVICE

WASHINGTON STATE)
) ss
COUNTY OF WHITMAN)

I, Roger Sandberg, state on oath:

1. At all times mentioned, I was over the age of eighteen.

2. On Thursday, July 1, 2010, I served Respondent Washington State University by personally delivering the following documents to an administrative assistant at the Attorney General's Office located at Washington State University, 332 French Administration Building, in Pullman, Washington. The document was served:

1. Petition for Review of Administrative Decision

DATED: This 1st day of July 2010.

Roger Sandberg #39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

SUPERIOR COURT OF WASHINGTON FOR WHITMAN COUNTY

DAVID J. BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	No. _____ PETITION FOR REVIEW OF ADMINISTRATIVE DECISION

Petitioner David Brown, by and through his attorney Roger Sandberg, petitions the Court pursuant to RCW 34.05.514 et. seq. for review of the administrative decision of the Conduct Board of Washington State University resulting in the sanction of suspension and trespass. The Conduct Board found that Mr. Brown had committed two violations of the WSU Student Conduct Code, Disruption under WAC 504-25-203, and Failure to Comply with University Officials under WAC 504-26-207. The Office of Student Conduct failed to follow its prescribed procedure in the prosecution of these alleged violations; the order of the Conduct Board is unconstitutional; the Board's decision is not supported by substantial evidence; and the Board's order is arbitrary or capricious.

1. **Petitioner:** David Jesse Brown, 345 NW Parr Drive, Pullman, Washington 99163.

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

2. **Petitioner's Attorney**: Roger Sandberg, Esser & Sandberg, PLLC, 520 East Main Street, Pullman, Washington 99163.

3. **Administrative Agency Whose Action Is At Issue**: The agency whose action is at issue is the Washington State University Office of Student Conduct, 190 Lighty Student Services Building, P.O. Box 641062, Pullman, Washington 99164-1062.

4. **Agency Action**: Petitioner appeals the April 12, 2010 decision of the Washington State University Conduct Board, and the May 31, 2010 decision of the Washington State University Appeal Committee affirming the decision of the Conduct Board.

5. **Parties to Administrative Adjudicative Proceeding**: Representing Washington State University at the administrative hearing was Chris Wuthrich. The Conduct Board was chaired by Professor Lisa McIntyre.

6. **Facts Demonstrating that Petitioner is Entitled to Judicial Review**:

Standing: Petitioner David Brown has standing under RCW 34.05.530 as he has been aggrieved or adversely affected by the decision of the University. The University's decision suspends Mr. Brown from the University until at least January 2011. He has also been trespassed from the WSU campus.

Exhaustion of Administrative Remedies: Mr. Brown has exhausted all administrative remedies, including filing an appeal with the University Appeal Committee, which appeal was resolved in the University's favor.

Timely Appeal: Mr. Brown's appeal is timely, having been filed and served within 30 days of service of the University's final order, which service occurred on June 4, 2010.

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

Venue: Pursuant to RCW 34.05.514, Mr. Brown files this appeal in the Superior Court of Whitman County.

7. **Petitioner's Reasons for Believing that Relief Should Be Granted**:

Pursuant to RCW 34.05.570(3), the following reasons exist which necessitate reversal of the University's order:

> (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
> ...
> (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
> ...
> (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
> ...
> (i) The order is arbitrary or capricious.

A. The University failed to follow a prescribed procedure, and its order was arbitrary and capricious. RCW 34.05.570(3)(c) allows the court to grant relief if, "The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure." The University has failed in at least two respects: (1) The Conduct Board incredibly refused to hear an actual recording of the statement made by Mr. Brown in the MIS 580 class when he offered to play it for the Board at the Student Conduct Hearing, choosing instead to base their decision on inaccurate paraphrases of the statement from other students who admittedly did not like Mr. Brown, and; (2) The Office of Student Conduct failed to clearly state the factual basis of the charges against Mr. Brown.

i. The Conduct Board wholly failed to perform its duty when it refused to hear the most important evidence in the case: a recording of the allegedly disruptive and insubordinate statement made by Mr. Brown.

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

By letters dated April 2, 2010 and April 7, 2010, Mr. Brown was informed that he was charged with violating three provisions of the student conduct code: WAC 504-26-204 Abuse of self or others; WAC 504-26-203 Disruption, and; WAC 504-26-207 Failure to comply with university officials or law enforcement officers. The April 7 letter included the following statement of facts which allegedly supported the violations:

> On or about April 1, 2010 during an in-class discussion in MIS 580 you responded to a question posed from the faculty member to the entire class paraphrased by a witness as follows:
>
> *You just have to realize that a lot of times you can't do something because you are just dumb. You need to look in the mirror and say that the reason you can't do it isn't anything other than you are really dumb. It's like if you kill someone. You can't say, I killed them for some other reason. You have to look in the mirror and say I killed them because I am dumb.*
>
> Students in the class report they were alarmed by your behavior and afraid you may harm them. During your response the faculty member attempted interrupt [sic] your comments but you continued to talk over her. The disruption you caused resulted in the cancellation of your accounting class on April 1.
>
> The disruption you caused in MIS 580 is a continuance of disruptive behaviors you were warned to stop in a letter from David Sprott dated March 10, 2010. Also, on March 25, 2010, you previously were warned by me about disruptive/threatening behavior. In addition, there is a pending student conduct complaint against you based on your harassment of a female student. (Emphasis in original.)

Clearly, the main focus of the proceedings against Mr. Brown was his statement made in the MIS 580 class, which is a class in WSU's Masters in Business Administration program, in which Mr. Brown was enrolled. At the Conduct Board hearing, Mr. Brown strongly disputed the paraphrased versions of his statement as inaccurate and taken out of context. The paraphrase was not offered by a disinterested party, it was offered by a student who admittedly did not like Mr. Brown. Mr. Brown's actual statement was relevant to the topic

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

that was being discussed in class that day. Mr. Brown records the lectures in class on his laptop computer, and had an audio recording of the actual statement that was made, and the discussions that led up to the statement and the discussions that followed. He offered to play the recording of the statement to the Conduct Board, so that they could judge the statement on its own merit. Incredibly, the Conduct Board refused to hear the recording – the most important evidence in the case – and gave no reason for its refusal.

The Board's refusal to hear the most pertinent evidence in the case is arbitrary and capricious. Worse, it is evidence that the Board members in this case were shamelessly impartial. Their decision casts doubt on the entire validity of the WSU Student Conduct process.

WSU Student Conduct Board proceedings are governed by WAC 504-26-403. Subsection (4)(a) of that rule contains the following provisions:

> (vii) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair.
>
> ...
>
> (xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the student conduct board shall have the discretion to determine admissibility of evidence.

It is true that these provisions vest in the chair of the Student Conduct Board the discretion to determine the admissibility of evidence. But where an actual recording of a statement alleged to single-handedly constitute two violations of the Student Conduct Code is offered to be played for the fact-finder, it is an abuse of discretion to not allow that recording into

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

evidence. By failing to admit relevant evidence, the University has failed to follow a prescribed procedure, and that decision is also arbitrary and capricious.

ii. The University improperly considered evidence of acts for which Mr. Brown had already been punished.

The Office of Student Conduct's April 7 letter setting forth the facts against Mr. Brown states, "The disruption you caused in MIS 580 is a continuance of disruptive behaviors you were warned to stop in a letter from David Sprott dated March 10, 2010." Those prior 'disruptive behaviors' had already been punished. That was the purpose of David Sprott's March 10 letter. Mr. Sprott was informed of the prior incidents, and made a decision that those incidents did not amount to a student conduct violation, and the sanction that he chose to impose was a 'warning'. Evidence relating to those prior incidents should not have been allowed to be re-introduced before the student conduct board when they had already been dealt with. WAC 504-26-403(4)(b) states:

> If the accused student is found responsible for any of the charges brought against the accused, the board may, **at that time**, consider the student's past contacts with the office of student conduct in determining an appropriate sanction. (Emphasis added)

Because that provision specifies that prior contacts may only be considered when determining the appropriate sanction, the implication is that **prior contacts with the office of student conduct may not be considered in determining whether a student is responsible for the charges he is currently facing**. If the university had already determined that the prior incidents did not constitute a violation of the student conduct code, those same incidents should not have been piled on to the current alleged violation in an attempt to improperly sway the Conduct Board's opinion against Mr. Brown. The current alleged violation should have been judged on its own merit.

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

Nonetheless, the Conduct Board did consider extensive evidence relating to those prior incidents. They heard testimony from David Sprott regarding the prior incidents, and admitted documents from Mr. Brown's student conduct file relating to incidents for which Mr. Brown had already been punished. The first two-and-a-half pages of the Conduct Board's five-page decision recite incidents from earlier in the school year that had already been dealt with by David Sprott.

The University's admission of evidence related to these prior incidents is another example of the University failing to follow its prescribed procedure.

iii. The University failed to sufficiently inform Mr. Brown of the factual basis of the charges against him.

WAC 504-26-403 states:

> (2) The written notice shall be completed by the conduct officer and shall include:
>
> (a) The specific complaint, including the university policy or regulation allegedly violated;
>
> (b) **The approximate time and place of the alleged act that forms the factual basis for the charge of violation**.... (Emphasis added)

The April 7 letter informing Mr. Brown of the charges against him failed to sufficiently delineate the facts supporting the individual charges. This became especially problematic when the Conduct Board found Mr. Brown 'not responsible' for the 'Abuse of self or others' charge, because it was impossible for Mr. Brown to discern which facts the Board found him to have committed, and which facts the Board found did not occur. Therefore, it was difficult, if not impossible, for Mr. Brown to accurately respond to the University's findings in his appeal to the University Appeal Committee.

What acts were deemed to constitute a violation of the University Conduct Code? For example, is the 'failure to comply with university officials' charge based on "a

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

continuance of disruptive behaviors you were warned to stop"? Or is it that Mr. Brown allegedly "continued to talk over" the faculty member who attempted to interrupt him in the MIS 580 class? Likewise, on which facts is the 'abuse of self or others' charge based? Is it based on the incident in the MIS 580 class? Or is it based on Mr. Brown's alleged "harassment of a female student"? Or is it based on the "continuance of disruptive behaviors you were warned to stop"? Finally, is the 'disruption' charge based on the statement in the MIS 580 class? Or is it based on a "continuance of disruptive behaviors you were warned to stop"?

The Conduct Board's decision failed to specify which facts supported the charges for which it found Mr. Brown 'responsible'. For example, Mr. Brown was found 'not responsible' for violating WAC 504-26-204, Abuse of self or others, which is defined as, "Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including one's self." Does the fact that Mr. Brown was found 'not responsible' for this charge mean that the conduct board found that he did not make a threatening statement in the MIS 580 class? **If the conduct board concluded that the statement was not threatening, then why was Mr. Brown trespassed from campus?** Or was the 'Abuse of self or others' charge related to the "disruptive/threatening behavior" that Mr. Brown was supposedly previously warned about by Chris Wuthrich on March 25? If so, is a finding of 'not responsible' a conclusion that that "disruptive/threatening behavior" did not occur?

On the other side of the coin, the Conduct Board found Mr. Brown 'responsible' for 'disruption' and 'responsible' for 'failure to comply with university officials'. Based on what facts? What specific facts, *not to include facts for which Mr. Brown was already*

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

sanctioned by David Sprott on March 10, support the university's decision that he was disruptive? Those facts must be articulated, so that Whitman County Superior Court can decide whether those facts support the charge. What specific facts support the university's decision that Mr. Brown have failed to comply with university officials? Again, those facts must be specified so that a reviewing court can decide whether the facts support the charge.

When a governmental agency, such as WSU, takes steps to restrict the freedoms and rights that Mr. Brown enjoys, such as the right to free speech and the right to travel freely, the government's action must be grounded in **specific** facts, not a "grab bag" of facts that the agency finds distasteful. **If WSU cannot articulate which facts support which charges, then WSU has not met its burden of finding by a preponderance of the evidence that Mr. Brown committed violations of the Student Conduct Code.**

B. Substantial evidence does not support the University's sanction. Prior incidents may not be considered by the Conduct Board in deciding whether a student is responsible for a violation of the Student Conduct Code. Without the prior incidents, the only evidence in support of sanctions against Mr. Brown is an inaccurate paraphrase of Mr. Brown's statement in the MIS 580 class – a paraphrase offered by a student who admittedly did not like Mr. Brown. That does not constitute substantial evidence which would justify the sanctions against Mr. Brown.

8. **Request for Relief**: Mr. Brown requests the following relief:

1. That this court reverse the decision of the University suspending him from the University until January 2011, and trespassing him from the WSU campus

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

2. Attorney fees pursuant to the Washington Equal Access to Justice Act, RCW 4.84.350.

3. If this court should remand this matter for a new trial at the University level, that the members of the Student Conduct Board in Mr. Brown's original trial not be allowed to participate.

3. Such other relief as the Court deems proper.

Appellant reserves the right to make a more complete statement of the issues stated herein.

DATED: This 1st day of July, 2010.

By _____
Roger Sandberg, WSBA No. 39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

SUPERIOR COURT OF WASHINGTON FOR WHITMAN COUNTY

DAVID BROWN, Petitioner, v. WASHINGTON STATE UNIVERSITY, Respondent.	No. _____ ATTORNEY'S AFFIDAVIT OF SERVICE

WASHINGTON STATE)
) ss
COUNTY OF WHITMAN)

I, Roger Sandberg, state on oath:

1. At all times mentioned, I was over the age of eighteen.

2. On Thursday, July 1, 2010, I served Respondent Washington State University by personally delivering the following documents to an administrative assistant at the Attorney General's Office located at Washington State University, 332 French Administration Building, in Pullman, Washington. The document was served:

1. Petition for Review of Administrative Decision

DATED: This 1st day of July 2010.

Roger Sandberg #39020

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205

Subscribed and sworn to before me this 1st day of July 2010.

Peggy Hynd

Notary Public in and for the
State of Washington.
My Commission expires 1-29-13

ESSER & SANDBERG, PLLC
ATTORNEYS AT LAW
520 EAST MAIN STREET
PULLMAN, WASHINGTON 99163
(509) 332-7692 FAX (509) 334-2205